

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, } NO. 2:09-CR-152-LRS-1
Plaintiff, }
v. } **ORDER DENYING
MOTION TO MODIFY
TERM OF IMPRISONMENT**
ANDRES REYES ZAPATA, }
Defendant. }

BEFORE THE COURT is Defendant's *pro se* Motion To Modify An Imposed Term Of Imprisonment. (ECF No. 95).

Amendment 782 to the United States Sentencing Guidelines (U.S.S.G.), which went into effect on November 1, 2014, reduces by two the offense levels assigned in the Drug Quantity Table, U.S.S.G. § 2D1.1, resulting in lower guideline ranges for most drug trafficking offenses. The Amendment was given retroactive effect.

On May 20, 2015, the Federal Defenders of Eastern Washington and Idaho were appointed as counsel for Defendant for the purpose of ascertaining his eligibility for relief pursuant to Amendment 782 and, if he was eligible, to pursue relief on his behalf. (ECF No. 89). On March 15, 2016, this court granted the Defenders' motion to withdraw based on their representation that "Mr. Zapata does not qualify for the reduction [because] Mr. Zapata received the mandatory minimum sentence and in addition the sentence on [the] drug

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1 count was lower than the bottom of the new guideline range." (ECF Nos. 93
2 and 94).

3 Defendant was sentenced on two counts: Count 1 for Possession With
4 Intent To Distribute 50 Grams Or More Of A Mixture Or Substance Containing
5 Methamphetamine, 21 U.S.C. §841(a)(1); Count 2 for Possession Of A Firearm
6 In Furtherance Of A Drug Trafficking Crime, 18 U.S.C. §924(c). Both counts
7 of conviction carried a statutory mandatory minimum of 60 months
imprisonment. Defendant was sentenced to 60 months on each count and as
8 required by 18 U.S.C. §924(c)(1)(D)(ii), the 60 months sentence on the firearm
9 charge was ordered to run consecutively to the 60 months sentence on the drug
10 charge. With regard to the drug charge, Defendant's Base Offense Level was
11 calculated at 32. Under Amendment 782, that would now be reduced to a Base
12 Offense Level of 30 and a resultant Total Offense Level of 27 after a three level
13 reduction for acceptance of responsibility. Based on Defendant's Criminal
14 History Category (III), the amended guideline range would be 87-108 months.
15 Pursuant to U.S.S.G. §1B1.10(b)(2)(A), this court could not sentence Defendant
16 to any less than the "minimum of the amended guideline range"- 87 months - on
17 the drug charge. And in any event, the court could not sentence the Defendant
18 to less than the statutory mandatory minimum of 60 months on the drug charge
19 which he received.

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Accordingly, Amendment 782 relief is of no avail to the Defendant and therefore, his Motion To Modify An Imposed Term Of Imprisonment (ECF No. 95) is **DENIED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and provide copies to Defendant and to all counsel of record.

DATED this 1st day of June, 2016.

s/Lonny R. Suko

LONNY R. SUKO
Senior United States District Judge

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